

accessible to the extent that it is not structurally impracticable.

(3) If providing accessibility in conformance with this section to individuals with certain disabilities (e.g., those who use wheelchairs) would be structurally impracticable, accessibility shall nonetheless be ensured to persons with other types of disabilities (e.g., those who use crutches or who have sight, hearing, or mental impairments) in accordance with this section.

(d) *Elevator exemption.* (1) For purposes of this paragraph (d)—

(i) *Professional office of a health care provider* means a location where a person or entity regulated by a State to provide professional services related to the physical or mental health of an individual makes such services available to the public. The facility housing the “professional office of a health care provider” only includes floor levels housing at least one health care provider, or any floor level designed or intended for use by at least one health care provider.

(ii) *Shopping center or shopping mall means—*

(A) A building housing five or more sales or rental establishments; or

(B) A series of buildings on a common site, either under common ownership or common control or developed either as one project or as a series of related projects, housing five or more sales or rental establishments. For purposes of this section, places of public accommodation of the types listed in paragraph (5) of the definition of “place of public accommodation” in section §36.104 are considered sales or rental establishments. The facility housing a “shopping center or shopping mall” only includes floor levels housing at least one sales or rental establishment, or any floor level designed or intended for use by at least one sales or rental establishment.

(2) This section does not require the installation of an elevator in a facility that is less than three stories or has less than 3000 square feet per story, except with respect to any facility that houses one or more of the following:

(i) A shopping center or shopping mall, or a professional office of a health care provider.

(ii) A terminal, depot, or other station used for specified public transportation, or an airport passenger terminal. In such a facility, any area housing passenger services, including boarding and debarking, loading and unloading, baggage claim, dining facilities, and other common areas open to the public, must be on an accessible route from an accessible entrance.

(3) The elevator exemption set forth in this paragraph (d) does not obviate or limit, in any way the obligation to comply with the other accessibility requirements established in paragraph (a) of this section. For example, in a facility that houses a shopping center or shopping mall, or a professional office of a health care provider, the floors that are above or below an accessible ground floor and that do not house sales or rental establishments or a professional office of a health care provider, must meet the requirements of this section but for the elevator.

#### § 36.402 Alterations.

(a) *General.* (1) Any alteration to a place of public accommodation or a commercial facility, after January 26, 1992, shall be made so as to ensure that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) An alteration is deemed to be undertaken after January 26, 1992, if the physical alteration of the property begins after that date.

(b) *Alteration.* For the purposes of this part, an alteration is a change to a place of public accommodation or a commercial facility that affects or could affect the usability of the building or facility or any part thereof.

(1) Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement in structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, re-roofing, painting or wallpapering, asbestos removal, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility.

(2) If existing elements, spaces, or common areas are altered, then each such altered element, space, or area shall comply with the applicable provisions of appendix A to this part.

(c) *To the maximum extent feasible.* The phrase “to the maximum extent feasible,” as used in this section, applies to the occasional case where the nature of an existing facility makes it virtually impossible to comply fully with applicable accessibility standards through a planned alteration. In these circumstances, the alteration shall provide the maximum physical accessibility feasible. Any altered features of the facility that can be made accessible shall be made accessible. If providing accessibility in conformance with this section to individuals with certain disabilities (e.g., those who use wheelchairs) would not be feasible, the facility shall be made accessible to persons with other types of disabilities (e.g., those who use crutches, those who have impaired vision or hearing, or those who have other impairments).

**§ 36.403 Alterations: Path of travel.**

(a) *General.* An alteration that affects or could affect the usability of or access to an area of a facility that contains a primary function shall be made so as to ensure that, to the maximum extent feasible, the path of travel to the altered area and the restrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the cost and scope of such alterations is disproportionate to the cost of the overall alteration.

(b) *Primary function.* A “primary function” is a major activity for which the facility is intended. Areas that contain a primary function include, but are not limited to, the customer services lobby of a bank, the dining area of a cafeteria, the meeting rooms in a conference center, as well as offices and other work areas in which the activities of the public accommodation or other private entity using the facility are carried out. Mechanical rooms, boiler rooms, supply storage rooms, employee lounges or locker rooms, janitorial closets, entrances, corridors,

and restrooms are not areas containing a primary function.

(c) *Alterations to an area containing a primary function.* (1) Alterations that affect the usability of or access to an area containing a primary function include, but are not limited to—

- (i) Remodeling merchandise display areas or employee work areas in a department store;
- (ii) Replacing an inaccessible floor surface in the customer service or employee work areas of a bank;
- (iii) Redesigning the assembly line area of a factory; or
- (iv) Installing a computer center in an accounting firm.

(2) For the purposes of this section, alterations to windows, hardware, controls, electrical outlets, and signage shall not be deemed to be alterations that affect the usability of or access to an area containing a primary function.

(d) *Landlord/tenant.* If a tenant is making alterations as defined in § 36.402 that would trigger the requirements of this section, those alterations by the tenant in areas that only the tenant occupies do not trigger a path of travel obligation upon the landlord with respect to areas of the facility under the landlord’s authority, if those areas are not otherwise being altered.

(e) *Path of travel.* (1) A “path of travel” includes a continuous, unobstructed way of pedestrian passage by means of which the altered area may be approached, entered, and exited, and which connects the altered area with an exterior approach (including sidewalks, streets, and parking areas), an entrance to the facility, and other parts of the facility.

(2) An accessible path of travel may consist of walks and sidewalks, curb ramps and other interior or exterior pedestrian ramps; clear floor paths through lobbies, corridors, rooms, and other improved areas; parking access aisles; elevators and lifts; or a combination of these elements.

(3) For the purposes of this part, the term “path of travel” also includes the restrooms, telephones, and drinking fountains serving the altered area.

(f) *Disproportionality.* (1) Alterations made to provide an accessible path of travel to the altered area will be deemed disproportionate to the overall